

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

SAM DONABEDIAN,

Plaintiff and Appellant,

v.

MERCURY INSURANCE COMPANY,

Defendant and Respondent.

B159982

(Los Angeles County
Super. Ct. No. BC249019)

ORDER MODIFYING OPINION
AND DENYING REHEARING

[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on March 11, 2004, be modified as follows:

1. On page 8, at the end of the third full paragraph, footnote 2 is to be moved to the end of the first full paragraph on page 9 (which begins “In contrast, the present case” and ends “lack of prior insurance as a rating criterion.”).

2. On page 8, in the first sentence of the last full paragraph (which begins “Nothing in *Wilson*”), the first word of the sentence should be changed from “Nothing” to “The decision” and the word “not” should be inserted between “is” and “to.” The corrected sentence will read:

The decision in *Wilson v. Fair Employment & Housing Com.* (1996)
46 Cal.App.4th 1213 (*Wilson*) is not to the contrary.

3. On page 14, in the second full paragraph (which begins ““In enacting . . .””), in the second sentence (which begins “As the plain text”), the word “make” should be changed to “make[s]”. The corrected sentence will read:

As the plain text of Insurance Code sections 1861.03 and 1861.10 make[s]
clear, Proposition 103 established a private right of action for [its] enforcement
. . . .

4. On page 25, in the first sentence of the second full paragraph (which begins “The Insurance Commissioner”), the words “Plaintiff contends” should be added at the beginning of the sentence, and the capital “T” in “The Insurance Commissioner” should be lower-cased. The corrected sentence will read:

Plaintiff contends the Insurance Commissioner did not approve Mercury’s
use of the lack of prior insurance to determine, for example, eligibility for the
Good Driver Discount or insurability.

5. On page 28, at the end of the first partial paragraph (which ends
“91 Cal.App.4th at pp. 882–887.)”) add a new footnote (No. 5) as follows:

⁵ Mercury argues that its conduct was protected under the “safe harbor”
doctrine (see *Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone
Co.* (1999) 20 Cal.4th 163, 182) because the Insurance Commissioner approved its
use of the absence of prior insurance as a rating criterion. As stated, we will not
resolve that factual issue at the pleading stage. We therefore do not reach
Mercury’s “safe harbor” argument.

There is no change in the judgment.

Respondent’s petition for rehearing is denied.

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